

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 7:17-cr-27-FL-1
5 Plaintiff, - New Bern, North Carolina
6 v. - January 23, 2020
7 DONALD RAY-EDTUAN DAVIS, - Arraignment
8 Defendant. -

TRANSCRIPT OF ARRAIGNMENT HEARING
BEFORE THE HONORABLE ROBERT B. JONES, JR.
UNITED STATES DISTRICT MAGISTRATE JUDGE.

APPEARANCES:

13 For the Plaintiffs: United States Attorneys' Office
14 By: Dena King
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23 Proceedings recorded by mechanical stenography,
transcript produced by notereading.

1 (Commenced at 9:42 a.m.)

2 THE COURT: All right. At this time I would
00:00:01 3 like to ask each of the defendants appearing before the
00:00:05 4 Court this morning to listen carefully to the following
00:00:08 5 information. This information will be an important part
00:00:12 6 of your case. You may be called upon this morning to
00:00:15 7 make decisions in your cases based on the following:

00:00:18 8 You are here because a bill of indictment
00:00:21 9 has been returned against you by the grand jury charging
00:00:25 10 you with a violation of one or more federal criminal
00:00:28 11 laws. You have certain rights as relate to these
00:00:32 12 charges, and I'm going to explain those rights to you.
00:00:36 13 As explained to you at your initial appearance, you have
00:00:39 14 the right to remain silent. You have the right to be
00:00:42 15 represented by an attorney and, if necessary, to have
00:00:45 16 the Court appoint an attorney to represent you in your
00:00:48 17 case, including at a trial. You have the right to a
00:00:52 18 trial by jury, and at such a trial you are presumed to
00:00:56 19 be innocent. You do not have to prove anything.
00:00:59 20 Instead, the burden is upon the government through its
00:01:02 21 attorneys and agents to prove you guilty by competent
00:01:05 22 evidence and beyond a reasonable doubt. The method for
00:01:09 23 the government to do this is to call its witnesses who
00:01:13 24 would testify under oath in front of you, in front of a
00:01:16 25 jury, and in front of the presiding district judge.

00:01:19 1 You, through your lawyer, will then have the right to
00:01:22 2 cross-examine those witnesses and to object to any
00:01:26 3 evidence you deem to be legally improper. You would
00:01:30 4 also have the right to use the subpoena power of this
00:01:33 5 Court to bring to court witnesses who may be favorable
00:01:36 6 to you and to have these witnesses testify under oath.
00:01:40 7 You also may elect to take the witness stand and testify
00:01:43 8 under oath, but only if you wish to do so. No one can
00:01:46 9 force you to take the witness stand and testify if you
00:01:50 10 do not want to. If you choose not to testify, the fact
00:01:53 11 that you do not testify cannot be held against you, and
00:01:56 12 the district judge will instruct the jury accordingly.

00:02:01 13 If you plead guilty to an offense this
00:02:03 14 morning, you will waive your right to a trial by jury
00:02:06 15 and the rights that I've just mentioned, other than your
00:02:09 16 right to an attorney. You also have to waive your right
00:02:12 17 not to incriminate yourself because I cannot accept your
00:02:16 18 plea of guilty as to a particular offense or offenses
00:02:20 19 unless you admit in open court your guilt as to that
00:02:23 20 particular offense or offenses.

00:02:26 21 By pleading guilty to a felony offense or
00:02:29 22 being convicted by a jury and adjudicated guilty of a
00:02:32 23 felony offense, you may lose certain valuable civil
00:02:36 24 rights such as the right to possess any kind of firearm,
00:02:39 25 the right to serve on a jury, the right to hold public

00:02:42 1 office, and the right to vote.

00:02:44 2 If you plead guilty or are found guilty at

00:02:47 3 trial, you may be ordered to make restitution in money

00:02:50 4 or services to victims of your crime if they are

00:02:53 5 identifiable.

00:02:54 6 In certain cases you may be required to

00:02:56 7 forfeit property to the United States Government.

00:02:59 8 If your offense involves fraud, you may be

00:03:02 9 required to provide notice of your conviction to the

00:03:05 10 victims of your crime.

00:03:06 11 In addition, if you are not a United States

00:03:08 12 citizen, your immigration status may be adversely

00:03:11 13 affected, and you may be subject to deportation,

00:03:14 14 exclusion, or voluntary departure and prevented from

00:03:17 15 obtaining U.S. citizenship.

00:03:20 16 As required by the law, a special assessment

00:03:22 17 or monetary amount of \$100 for each felony offense or

00:03:28 18 count to which you plead guilty or are found guilty at

00:03:31 19 trial will be imposed against you. This special

00:03:34 20 assessment of \$100 per count will be in addition to and

00:03:38 21 on top of any fine that may also be imposed.

00:03:42 22 You may be given a term of supervised

00:03:45 23 release following any actual term of incarceration that

00:03:48 24 is imposed. Supervised release is similar to what you

00:03:51 25 may know as probation. The term of supervised release

00:03:55 1 in each individual case can range anywhere from one year
00:03:58 2 up to life based upon your individual criminal history
00:04:01 3 and the offense. Supervised release would require you
00:04:04 4 to report to your assigned probation officer from time
00:04:07 5 to time and to comply with any Court-imposed or
00:04:10 6 -directed instructions. If you violate supervised
00:04:14 7 release conditions, you may be required to serve an
00:04:17 8 additional time of incarceration.

00:04:19 9 The United States Sentencing Commission has
00:04:21 10 established advisory guideline ranges for all federal
00:04:24 11 crimes. Although the district judge is no longer
00:04:27 12 required to specifically follow the guidelines in
00:04:30 13 sentencing you, he or she is required to calculate the
00:04:33 14 advisory guideline for your offense or offenses. The
00:04:37 15 district judge will then consider that guideline range
00:04:39 16 as well as other relevant factors that are set forth in
00:04:43 17 Title 18 of the United States Code, Section 3553(a),
00:04:46 18 before imposing a sentence.

00:04:48 19 The district judge has the authority in some
00:04:51 20 circumstances to depart upward or downward from that
00:04:55 21 advisory guideline range and will also examine other
00:04:58 22 factors under 18, U.S. Code, Section 3553(a) that may
00:05:02 23 result in a sentence that is either greater or lesser
00:05:05 24 than advisory guideline sentence. If the district judge
00:05:11 25 imposes a sentence outside the guideline range, he or

00:05:13 1 she is required to explain on the record at the time of
00:05:16 2 sentencing his or her reasons for imposing a sentence
00:05:19 3 outside the guidelines.

00:05:21 4 Under some circumstances you may have the
00:05:23 5 right to appeal your sentence even though you pled
00:05:27 6 guilty to the underlying crime. However, if you have
00:05:30 7 waived the right to appeal your sentence in a plea
00:05:32 8 agreement with the government, that agreement may be
00:05:34 9 binding upon you.

00:05:37 10 You should understand that parole has been
00:05:39 11 abolished in the United States court system. So if you
00:05:42 12 receive a sentence which includes an active term of
00:05:45 13 incarceration, you will not receive parole.

00:05:49 14 You should also know that the Court is not a
00:05:51 15 party to a plea agreement and does not participate in
00:05:54 16 the plea agreement negotiations. However, the Court's
00:05:57 17 obligated to examine carefully any plea agreement with
00:06:00 18 the government to insure that it conforms to the
00:06:03 19 objectives of sentencing.

00:06:06 20 Rule 11 of the Federal Rules of Criminal
00:06:08 21 Procedure applies to the Court's consideration of plea
00:06:11 22 agreements and provides as follows:

00:06:13 23 That in one type of a plea agreement, you or
00:06:16 24 the government may request or recommend to the Court
00:06:20 25 that a particular sentence or sentencing range is

00:06:23 1 appropriate, or that a particular provision of the
00:06:27 2 guidelines does or does not apply. Even if the Court
00:06:30 3 accepts this type of a plea agreement, the Court is not
00:06:33 4 required to accept the recommendation or request, and
00:06:37 5 you do not have the right to withdraw your guilty plea
00:06:39 6 if the Court does not follow the sentencing
00:06:41 7 recommendation or request.

00:06:44 8 On the other hand, there may be plea
00:06:47 9 agreements in which the government agrees not to bring
00:06:49 10 or will move to dismiss other charges, or which you and
00:06:54 11 the government agree to a specific sentence or
00:06:57 12 sentencing range, or to the applicability of a
00:06:59 13 particular provision of the guidelines. If the Court
00:07:01 14 accepts this type of a plea agreement, then the terms
00:07:06 15 that the parties have agreed upon are binding on the
00:07:08 16 Court, and the agreed-upon disposition will be included
00:07:11 17 in the judgment, unless otherwise directed by the plea
00:07:14 18 agreement. However, if the Court does not accept this
00:07:17 19 type of a plea agreement, where there is such an
00:07:20 20 agreement between the parties, the defendant will have
00:07:23 21 the opportunity to withdraw his or her plea. If the
00:07:27 22 defendant does not withdraw the plea, however, the Court
00:07:30 23 is not required to follow the plea agreement and may
00:07:32 24 dispose of the case less favorably than the agreement
00:07:35 25 had provided.

00:07:38 1 A written presentence report will be
00:07:40 2 prepared by the probation office to assist the district
00:07:44 3 judge in sentencing. You will be asked to give
00:07:47 4 information for this report, and you are entitled to
00:07:50 5 have your attorney present during the interview. It is
00:07:54 6 important that the presentence report be accurate
00:07:57 7 because it will likely determine your punishment range.

00:08:01 8 After that report has been prepared, you and
00:08:03 9 your attorney will have an opportunity to review the
00:08:05 10 report and to object to any aspects of the report you
00:08:09 11 believe are inaccurate. Any objections to the
00:08:14 12 presentence report must be made in writing and on a
00:08:17 13 timely basis. If you do not contest the facts that are
00:08:21 14 set forth in the presentence report, and the Court's
00:08:23 15 independent findings coincide with those facts, those
00:08:26 16 facts will be accepted by the Court as correct, and the
00:08:29 17 Court will rely upon them to determine the guidelines
00:08:32 18 applicable to your case.

00:08:33 19 If a party seeks to argue for a sentence
00:08:36 20 which varies from the sentencing guidelines, that party
00:08:40 21 shall written briefing in support of that position and
00:08:43 22 serve a courtesy copy on the probation officer who
00:08:46 23 drafted the presentence report.

00:08:48 24 At the time of sentencing you and your
00:08:50 25 attorney will be given the chance to speak to the Court

00:08:54 1 and to argue for a sentence that you and your attorney
00:08:56 2 feel is appropriate under 18, U.S. Code, Section
00:08:59 3 3553(a). Judge Flanagan does not allow oral testimony
00:09:04 4 in the nature of character evidence at the sentencing
00:09:06 5 hearing but will be happy to receive from your attorney
00:09:10 6 written sentencing briefing or character letters, all of
00:09:13 7 which should be provided to the Court at least one week
00:09:16 8 before the date which you are to be sentenced.

00:09:19 9 Finally, if there are any victims of the
00:09:22 10 offenses for which you are to be sentenced, these
00:09:24 11 victims will be given the chance to be heard at that
00:09:27 12 sentencing hearing.

00:09:28 13 That concludes the explanation of your
00:09:31 14 rights. Those cases in which a plea of guilty is
00:09:37 15 entered today will be scheduled for sentencing hearing
00:09:42 16 to be held no sooner than 90 days from today before
00:09:44 17 Judge Flanagan. It's anticipated that those cases will
00:09:46 18 be set for the May 2020 term of court. Any case in
00:09:49 19 which a plea of not guilty is entered today, those
00:09:54 20 parties will have an administrative telephonic
00:09:55 21 conference before Judge Flanagan, and counsel will be
00:09:58 22 contacted in those cases to arrange the date and time of
00:10:01 23 that conference as well as to provide the dial-in
00:10:04 24 instructions to participate in that conference.

00:10:07 25 All right. Each defendant appearing today

00:10:09 1 should know that as I take up your case to hear your
00:10:12 2 plea and to address you personally that you'll be placed
00:10:17 3 under oath. And if you should answer any of my
00:10:19 4 questions falsely that your answers may later be used
00:10:21 5 against you in another prosecution for perjury or making
00:10:25 6 a false statement.

00:10:28 7 For the Assistant United States Attorneys
00:10:31 8 here, I think it's Mr. Parris and Ms. King, are there
00:10:35 9 any victims in any of these cases?

00:10:38 10 MR. PARRIS: Not in my case, Your Honor.

00:10:39 11 THE COURT: Ms. King, do you know?

00:10:41 12 MS. KING: No, Your Honor; there are not.

00:10:43 13 THE COURT: We'll start with Mr. McDonald,
00:10:46 14 then Mr. Mabry, Mr. Carter, then we'll conclude with Mr.
00:10:50 15 Davis.

00:10:50 16 (Whereupon a discussion was had regarding
00:10:50 17 unrelated cases.)

01:03:49 18 THE CLERK: The Court calls the following
01:03:50 19 case for arraignment: United States of America versus
01:03:53 20 Donald Davis, court file 7:17-cr-27-FL, Defendant 1.
01:04:04 21 Mr. Davis, if you would stand, please, and raise your
01:04:08 22 right hand. I'm going to place you under oath.

01:04:11 23 (Whereupon the Defendant was sworn by the
01:04:24 24 clerk.)

01:04:24 25 THE COURT: Mr. Davis, sir, I have in my

01:04:26 1 hands a document in your case entitled "Consent to
01:04:29 2 Proceed Before a Magistrate Judge." It appears to be
01:04:32 3 signed by you as well as Mr. Ayers, your attorney in
01:04:35 4 this case. Did you sign this document, sir?

01:04:38 5 THE DEFENDANT: Yes, sir.

01:04:38 6 THE COURT: And is it your knowing and
01:04:39 7 voluntary desire that for the purpose of conducting your
01:04:43 8 arraignment in this case and taking your plea this
01:04:46 9 morning that I may conduct these proceedings as a United
01:04:49 10 States Magistrate Judge?

01:04:51 11 THE DEFENDANT: Yes, sir.

01:04:51 12 THE COURT: Thank you. Please have a seat.

01:05:04 13 Now, Mr. Davis, sir, do you understand that you are now
01:05:07 14 under oath and if you answer any of my questions falsely
01:05:09 15 that your answers may later be used against you in
01:05:13 16 another prosecution for perjury or making a false
01:05:15 17 statement?

01:05:16 18 THE DEFENDANT: Yes, sir.

01:05:16 19 THE COURT: What is your full name?

01:05:18 20 THE DEFENDANT: Donald Ray-Edtuan Davis.

01:05:22 21 THE COURT: How old are you?

01:05:24 22 THE DEFENDANT: Forty-two.

01:05:25 23 THE COURT: How far have you gone in school?

01:05:28 24 THE DEFENDANT: Diploma, high school
01:05:30 25 diploma.

01:05:30 1 THE COURT: Are you able to speak and
01:05:31 2 understand English?

01:05:33 3 THE DEFENDANT: Yes, sir.

01:05:34 4 THE COURT: Are you able to read?

01:05:35 5 THE DEFENDANT: Yes.

01:05:35 6 THE COURT: Are you currently or have you
01:05:37 7 recently been under the care of a physician or
01:05:39 8 psychiatrist or been hospitalized or treated for
01:05:42 9 narcotics addiction?

01:05:43 10 THE DEFENDANT: Yes, sir.

01:05:43 11 THE COURT: Can you tell me about that?

01:05:46 12 THE DEFENDANT: At Fort Devens,
01:05:47 13 Massachusetts; and in New Hanover County Jail.

01:05:52 14 THE COURT: This was in relation to the
01:05:55 15 competency evaluation; is that correct?

01:05:58 16 MR. AYERS: A part of it, Judge.

01:05:59 17 THE COURT: Anything more recent than that?

01:06:04 18 THE DEFENDANT: I'm not on meds right now
01:06:06 19 because they're supposed to change them.

01:06:09 20 THE COURT: But he had a competency
01:06:11 21 evaluation?

01:06:11 22 MR. AYERS: He did. And this is just like
01:06:13 23 the other case. I believe he's competent, would
01:06:16 24 stipulate for purposes today. But there are issues I'm
01:06:19 25 going to have to raise at sentencing about his prior

01:06:22 1 drug use and diminished capacity, which is a separate
01:06:26 2 issue than what we're dealing with.

01:06:29 3 THE COURT: All right. That's fine.

01:06:33 4 Mr. Davis, let me ask you, sir -- you may
01:06:36 5 have answered this already. Have you taken any drugs,
01:06:39 6 any medicine, any pills, or had any alcoholic beverages
01:06:43 7 in the past 24 hours?

01:06:45 8 THE DEFENDANT: Yes. Blood pressure pill.

01:06:47 9 THE COURT: Okay. Anything else?

01:06:49 10 THE DEFENDANT: No, sir.

01:06:50 11 THE COURT: Do you believe that that
01:06:51 12 medication affects your ability to understand these
01:06:54 13 proceedings?

01:06:55 14 THE DEFENDANT: No, sir.

01:06:55 15 THE COURT: Mr. Davis, have you been
01:06:56 16 provided with a copy of the charges against you in this
01:06:59 17 case?

01:07:00 18 THE DEFENDANT: Yes, sir.

01:07:00 19 THE COURT: And have you fully discussed
01:07:03 20 those charges as well as your case in general with your
01:07:06 21 attorney?

01:07:06 22 THE DEFENDANT: Yes, sir.

01:07:07 23 THE COURT: Do you understand the charges
01:07:09 24 against you in this case?

01:07:10 25 THE DEFENDANT: Yes, sir.

01:07:11 1 THE COURT: Do you understand what's
01:07:12 2 happening this morning?

01:07:13 3 THE DEFENDANT: Yes, sir.

01:07:14 4 THE COURT: Mr. Ayers, any difficulty in
01:07:16 5 communicating with Mr. Davis or any reason to doubt his
01:07:18 6 mental competency in this case?

01:07:21 7 THE DEFENDANT: No, Your Honor.

01:07:21 8 THE COURT: Does the United States have any
01:07:23 9 reason to doubt Mr. Davis's mental competency in this
01:07:26 10 case?

01:07:27 11 MS. KING: No, Your Honor.

01:07:27 12 THE COURT: The Court finds the defendant,
01:07:30 13 Donald Ray-Edtuan Davis, is competent to appear, to
01:07:33 14 understand the nature of these proceedings, and to
01:07:36 15 ultimately plead in these matters.

01:07:37 16 Mr. Davis, sir, have you had the time to and
01:07:40 17 have you, in fact, discussed your case with your
01:07:42 18 attorney?

01:07:43 19 THE DEFENDANT: Yes, sir.

01:07:43 20 THE COURT: Are you satisfied with Mr.
01:07:45 21 Ayers's advice and counsel to you in this matter?

01:07:48 22 THE DEFENDANT: Yes, sir.

01:07:48 23 THE COURT: Did you hear and understand my
01:07:50 24 explanation of your rights this morning?

01:07:53 25 THE DEFENDANT: Yes, sir.

01:07:53 1 THE COURT: Did you understand my general
01:07:55 2 explanation of how you might be sentenced in this case?
01:07:58 3 THE DEFENDANT: Yes, sir.
01:07:58 4 THE COURT: Mr. Davis, did you receive a
01:07:59 5 copy of the indictment in this case charging you in
01:08:02 6 three counts?
01:08:04 7 THE DEFENDANT: Yes, sir.
01:08:05 8 THE COURT: And you understand what you're
01:08:07 9 charged with in each of those counts?
01:08:09 10 THE DEFENDANT: Yes, sir.
01:08:09 11 THE COURT: Do you want me to read those
01:08:11 12 charges to you out loud, or do you waive the reading of
01:08:14 13 them?
01:08:15 14 THE DEFENDANT: Waive.
01:08:15 15 THE COURT: I'm required to remind you of
01:08:17 16 the maximum possible penalty, not the guidelines, but
01:08:19 17 the maximum possible penalty for each count that you
01:08:22 18 face, including any mandatory minimum penalty.
01:08:25 19 Would the government please remind Mr. Davis
01:08:27 20 as to that information.
01:08:28 21 MS. KING: Yes. Mr. Davis, as it pertains
01:08:32 22 to Count One, the maximum penalty is not more than 20
01:08:35 23 years imprisonment, a fine of not more than \$1 million,
01:08:37 24 or both fine and imprisonment, not less than three years
01:08:40 25 supervised release, not more than life. Upon revocation

01:08:43 1 of supervised release, not more than two years
01:08:46 2 imprisonment, \$100 special assessment, and restitution.
01:08:49 3 If subjected to an 851 enhancement, the maximum penalty
01:08:54 4 increases to not more than 30 years imprisonment, a fine
01:08:57 5 of not more than \$2 million, or a fine and imprisonment,
01:09:01 6 not less than six years up to life supervised release,
01:09:05 7 not more than three years imprisonment upon revocation
01:09:08 8 of supervised release, \$100 special assessment, and
01:09:12 9 restitution.

01:09:13 10 As it relates to Count Two, the maximum
01:09:16 11 penalty if you're determined to be a non-armed career
01:09:18 12 offender is not more than ten years imprisonment, a fine
01:09:22 13 not to exceed \$250,000, or fine and imprisonment, not
01:09:27 14 more than three years supervised release, not more than
01:09:30 15 two years upon revocation, \$100 special assessment, and
01:09:34 16 restitution. If it's determined that you are an armed
01:09:37 17 career offender, maximum penalty for Count Two increases
01:09:42 18 to not less than 15 years imprisonment but not more than
01:09:45 19 life, \$250,000 fine, or fine and imprisonment, not more
01:09:52 20 than five years supervised release, upon revocation of
01:09:54 21 supervised release, not more than five years, \$100
01:09:58 22 special assessment, and restitution.

01:09:59 23 Finally, as it relates to Count Three, the
01:10:01 24 maximum penalty is not less than five years or more than
01:10:05 25 life imprisonment consecutive to any other term of

01:10:08 1 imprisonment, \$250,000 fine, or both fine and
01:10:11 2 imprisonment, not more than five years supervised
01:10:15 3 release, upon revocation of supervised release, not
01:10:17 4 more than five years imprisonment, \$100 special
01:10:20 5 assessment, and restitution.

01:10:22 6 THE COURT: Mr. Davis, sir, do you
01:10:24 7 understand the charges that have been filed against you
01:10:27 8 in this case as well as the maximum punishment you face
01:10:30 9 if found guilty of those charges?

01:10:31 10 THE DEFENDANT: Yes, sir.

01:10:32 11 THE COURT: Mr. Ayers, were all formal plea
01:10:34 12 offers by the government conveyed to Mr. Davis?

01:10:36 13 MR. AYERS: They were, Your Honor.

01:10:38 14 THE COURT: Mr. Davis, I have a document.

01:10:43 15 It is six pages. It is entitled "Memorandum of Plea
01:10:46 16 Agreement." It appears to be signed by you as well as
01:10:49 17 Mr. Ayers. It appears from this document that it is
01:10:52 18 your intention to plead guilty to Count One of the
01:10:55 19 indictment. Is that your intention, sir?

01:10:56 20 THE DEFENDANT: Yes, sir.

01:10:57 21 THE COURT: Did you, in fact, sign this
01:10:58 22 document?

01:10:59 23 THE DEFENDANT: Yes, sir.

01:10:59 24 THE COURT: Mr. Davis, have you had an
01:11:01 25 opportunity to read and to discuss this plea agreement

01:11:05 1 with your attorney; and did you, in fact, do so before
01:11:08 2 you signed it?

01:11:09 3 THE DEFENDANT: Yes, sir.

01:11:09 4 THE COURT: Are there any other agreements
01:11:11 5 that you have with the United States or the U.S.
01:11:14 6 Attorney related to this case other than this plea
01:11:16 7 agreement?

01:11:16 8 THE DEFENDANT: No, sir.

01:11:17 9 THE COURT: Did you understand the terms,
01:11:19 10 the language, the words, the sentences, even any legal
01:11:22 11 phrases that are used in this plea agreement after you
01:11:26 12 discussed it with Mr. Ayers?

01:11:29 13 THE DEFENDANT: Yes, sir.

01:11:29 14 THE COURT: Do you understand that by
01:11:31 15 entering into this plea agreement and entering a plea of
01:11:33 16 guilty that you will have waived or given up your right
01:11:36 17 to appeal or to collaterally attack all or a part of
01:11:40 18 your sentence?

01:11:41 19 THE DEFENDANT: Yes, sir.

01:11:41 20 THE COURT: Has anyone made any other or
01:11:43 21 different promises to you to get you to plead guilty in
01:11:46 22 this case other than what's contained in the plea
01:11:48 23 agreement?

01:11:48 24 THE DEFENDANT: No, sir.

01:11:49 25 THE COURT: Has anyone threatened you in any

01:11:51 1 way to persuade you to either accept this agreement or
01:11:54 2 to plead guilty in this case?

01:11:56 3 THE DEFENDANT: No, sir.

01:11:57 4 THE COURT: Mr. Davis, sir, are you pleading
01:11:59 5 guilty of your own free will because you are, in fact,
01:12:02 6 guilty?

01:12:03 7 THE DEFENDANT: Yes, sir.

01:12:03 8 THE COURT: Do you understand that the
01:12:04 9 offense to which you are pleading guilty is a felony
01:12:08 10 offense, that if your plea is accepted by the Court
01:12:11 11 you'll be found guilty of that offense, and that may
01:12:13 12 deprive you of valuable civil rights such as the right
01:12:17 13 to vote, to hold public office, to serve on a jury, and
01:12:20 14 possess a firearm?

01:12:23 15 THE DEFENDANT: Yes, sir.

01:12:23 16 THE COURT: Do you understand that if you
01:12:25 17 are not a United States citizen that a plea of guilty
01:12:27 18 may subject you to deportation, exclusion, or voluntary
01:12:31 19 departure, and prevent you from obtaining U.S.
01:12:34 20 citizenship?

01:12:36 21 THE DEFENDANT: Yes, sir.

01:12:37 22 THE COURT: Do you understand that if I
01:12:38 23 accept your plea of guilty this morning that you may not
01:12:42 24 be able to withdraw your plea or have a trial in this
01:12:44 25 case?

01:12:45 1 THE DEFENDANT: Yes, sir.

01:12:45 2 THE COURT: Have you answered all my

01:12:46 3 questions truthfully?

01:12:47 4 THE DEFENDANT: Yes, sir.

01:12:48 5 THE COURT: Do you need any more time either

01:12:50 6 to think about your plea or to discuss your case with

01:12:53 7 Mr. Ayers before entering your plea?

01:13:00 8 THE DEFENDANT: One second.

01:13:01 9 THE COURT: Go ahead.

01:13:04 10 (Discussion had off the record between the

01:13:07 11 defendant and defense counsel.)

01:13:08 12 THE DEFENDANT: Yes, sir.

01:13:09 13 THE COURT: Mr. Davis, are you ready to

01:13:11 14 enter your plea at this time?

01:13:12 15 THE DEFENDANT: Yes, sir.

01:13:13 16 THE COURT: Mr. Davis, how do you plead to

01:13:15 17 Count One of the indictment?

01:13:16 18 THE DEFENDANT: Guilty.

01:13:17 19 THE COURT: Now, did you, Mr. Davis, as

01:13:20 20 charged in Count One, on or about January 9th, 2017, in

01:13:23 21 the Eastern District of North Carolina, knowingly and

01:13:27 22 intentionally possess with the intent to distribute a

01:13:29 23 quantity of a mixture and substance containing a

01:13:33 24 detectable amount of heroin, a Schedule I controlled

01:13:38 25 substance, in violation of 21, U.S. Code, Section

01:13:40 1 841(a)(1)? Did you do all that?

01:13:43 2 THE DEFENDANT: Yes, sir.

01:13:43 3 THE COURT: If the government will provide
01:13:46 4 the Court a factual basis supportive of Mr. Davis's plea
01:13:49 5 of guilty to Count One of the indictment, telling the
01:13:50 6 Court what the government believes it could prove at a
01:13:52 7 trial in this case.

01:13:54 8 MS. KING: Your Honor, on January 9th, 2017,
01:13:56 9 the New Hanover County Sheriff's Office and the Pender
01:13:59 10 County Sheriff's Office utilized a confidential
01:14:02 11 informant to arrange a controlled purchase of heroin
01:14:05 12 directly from Mr. Davis in Wilmington, North Carolina in
01:14:09 13 the Eastern District of North Carolina.

01:14:11 14 At that time Mr. Davis did have active
01:14:13 15 arrest warrants arising out of Brunswick County for some
01:14:16 16 state-related offenses.

01:14:18 17 During the recorded phone call between Mr.
01:14:21 18 Davis and the CI, there was an agreement that the CI
01:14:25 19 would purchase a clip, which is roughly 50 bags of
01:14:28 20 heroin, at an agreed-upon location, which was a gym in
01:14:32 21 Wilmington, North Carolina.

01:14:34 22 The CI was searched, equipped with
01:14:37 23 audio/video recording, and also \$400 for the purchase.

01:14:41 24 The CI actually went to the parking lot of
01:14:43 25 this fitness gym to wait on Mr. Davis to arrive. Law

01:14:47 1 enforcement in the area surveilled and saw Mr. Davis as
01:14:50 2 he arrived in the parking lot. He drove past the CI and
01:14:54 3 then exited the parking lot.

01:14:56 4 At that time law enforcement attempted to
01:14:59 5 position themselves around Mr. Davis's car on all sides
01:15:05 6 in an effect to properly block him in and arrest him,
01:15:10 7 but at that time Mr. Davis accelerated his car, in
01:15:13 8 essence just drove away from law enforcement.

01:15:15 9 Law enforcement did, in fact, ensue a chase.
01:15:18 10 And at some point through this chase Mr. Davis
01:15:22 11 ultimately collided his car into another car. Mr. Davis
01:15:25 12 then jumped from his car, ran, but law enforcement was
01:15:29 13 able to apprehend him a short while later.

01:15:32 14 Law enforcement did come back to his car.
01:15:34 15 They searched his car where they located a .45 caliber
01:15:37 16 handgun, 50 bindles of suspected heroin, Mr. Davis's
01:15:43 17 driver's license, as well as marijuana.

01:15:45 18 The items that I described as suspected
01:15:48 19 heroin was sent off to the crime lab for analysis, and
01:15:51 20 the crime lab determined that it was, in fact, heroin.

01:15:53 21 Your Honor, these would be the facts in this
01:15:56 22 case.

01:15:56 23 THE COURT: Mr. Ayers, do you care to
01:15:58 24 respond to the government's proffer?

01:15:59 25 MR. AYERS: Judge, we have no objection.

01:16:01 1 There are obviously sentencing issues that will be
01:16:05 2 raised at the appropriate time; I don't want to waive
01:16:07 3 those. But for our purposes today, we understand that's
01:16:12 4 what the government thinks that they could prove at
01:16:13 5 trial, Your Honor.

01:16:13 6 THE COURT: As it relates to the material
01:16:14 7 elements of the offense, no objection?

01:16:16 8 MR. AYERS: No objection. Correct, Your
01:16:17 9 Honor.

01:16:17 10 THE COURT: Mr. Davis, did you hear and
01:16:20 11 understand what the prosecutor's told me regarding
01:16:24 12 material elements of the offense charged in Count One?

01:16:29 13 (Discussion had off the record between the
01:16:29 14 defendant and defense counsel.)

01:16:34 15 THE COURT: I just want to know whether you
01:16:36 16 dispute anything she's told me regarding the material
01:16:39 17 elements of Count One that she has described, what the
01:16:42 18 government could prove at a trial in this case.

01:16:43 19 THE DEFENDANT: No, sir.

01:16:44 20 THE COURT: All right. The Court is
01:16:45 21 satisfied with the responses given during this hearing
01:16:50 22 and makes the following findings: It is the finding of
01:16:53 23 this Court in the case of United States of America
01:16:55 24 versus Donald Ray-Edtuan Davis, case number 7:17-cr-27,
01:16:59 25 that Mr. Davis is fully competent and capable of

01:17:01 1 entering an informed plea. His plea of guilty to Count
01:17:05 2 One is being made knowingly and voluntarily. It is
01:17:08 3 supported by an independent factual basis containing
01:17:11 4 each of the essential elements of the offense charged
01:17:13 5 therein. Mr. Davis's plea is therefore accepted. He is
01:17:16 6 hereby adjudged guilty of Count One. And the Court
01:17:18 7 hereby conditionally approves the parties' plea
01:17:24 8 agreement.

01:17:24 9 The parties will be notified in writing of
01:17:26 10 the date and the place of sentencing in this matter. As
01:17:30 11 I said earlier, it is anticipated sentencing will be at
01:17:32 12 Judge Flanagan's term in May.

01:17:35 13 Defense counsel is directed to contact
01:17:37 14 probation before leaving the court today to arrange a
01:17:39 15 time to commence preparation of the PSR in Mr. Davis's
01:17:43 16 case.

01:17:44 17 Mr. Ayers, anything further on behalf of Mr.
01:17:48 18 Davis?

01:17:48 19 MR. AYERS: No, Your Honor.

01:17:49 20 THE COURT: From the government?

01:17:50 21 MS. KING: No, Your Honor.

01:17:51 22 THE COURT: Thank you very much.

23 (Concluded at 10:59 a.m.)

24 - - -
25

C E R T I F I C A T E

3 I certify that the foregoing is a correct transcript
4 from the record of proceedings in the above-entitled
5 matter.

7 /s/ Tracy L. McGurk

12/17/2021

8 Tracy L. McGurk, RMR, CRR

Date